184 ' Supreme Court, U.S. FILED (1)

No.

01193

OFFICE

IN THE
SUPREME COURT
OF THE
UNITED STATES

Christopher P. Matera,
Petitioner

v.

State of Tennessee
Department of Children's Services;
Et Al,
Respondents

On Petition for Writ of *Certiorari*
To the Eastern Court of Appeals
Of the State of Tennessee

Petition for a Writ of *Certiorari*

Christopher P. Matera
Petitioner, *Pro Se*
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I. QUESTIONS FOR REVIEW

The following questions are presented by the Petitioner, as it may please the Court:

1. Whether the allowance of permissive venue for adoption of children in trial court proceedings violates equal protection under U.S. Constitution Article XIV.

2. Whether trial court proceeding denied substantive due process to Appellant, who was seeking custody for the best interest of the children, and to adopt the children.

II. LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Christopher P. Matera Lauretta M. Matera	}	Appellants
State of Tennessee Department of Children's Services (DCS),	}	Appellees
Timothy Wattenbarger Lisa Wattenbarger	}	Co-Appellees

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V. INTRODUCTION

Comes now, Christopher Matera, Petitioner, who, with his wife Lauretta Martin Matera, having first filed their petition for a writ of certiorari on November 23, 2010, and then alone, again on January 24, 2011, now resubmits his Petition for a Writ of *Certiorari*, with corrections, as per Supreme Court Rule 14.5.

Concerning one and only one group of material facts, Petitioner brought with his wife Lauretta Martin Matera their issues jointly, as may be practicable as legal husband and wife (entered by the County Clerk in their County's Marriage Book on October 27, 2008), having both and together appealed this present case throughout the court system of the State of Tennessee, in accordance to Tennessee Rules of Appellate Procedure 16:

> "Tennessee Rules of Appellate Procedure, Rule 16, — Joint and Consolidated Appeals. — (a) Joint Appeals. — If two or more persons are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may proceed on appeal jointly."

now brings his two Questions (on p. (i)) to the Court.

VI. STATEMENT OF THE BASIS FOR JURISDICTION

The decision of the three-judge Court of Appeals in Tennessee affirming the order of the Trial court for Devon W., et al, Court of Appeals Case No. E2009-01326-COA-R3-JV (Blount County Case No. E-22811) was entered on April 16, 2010. (See XI. APPENDIX A – COURT OPINIONS, p.A-2–A-18.) The Application for Permission to Appeal to the Supreme Court of Tennessee was submitted on June 15, 2010. While this Application was denied, the Supreme Court ruled the Opinion of the Court of Appeals to be designated "Not for Citation", in accordance with T.S.C. Rule 4(E). (See XI. APPENDIX A – COURT OPINIONS, p. A-19). The jurisdiction of this Court is given by Supreme Court Rule 10 which provides for appeals from the State's high courts.

VII. CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Fourteenth Amendment to the

Constitution of the United States provides in pertinent part that:

> "[N]or shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Tennessee Code Annotated §36-1-114 provides as follows:

> "The termination or adoption petition may be filed in the county:
>
> (1) Where the petitioners reside;
> (2) Where the child resides;
> (3) Where the child resided when:
>
> (A) The child became subject to the care and control of a public or private child-caring or child-placing agency; or
>
> (B) The child became subject to partial or complete guardianship or co-guardianship pursuant to a surrender proceeding as provided in this part; or
>
> (4) In which is located any licensed child-placing agency or institution operated under the laws of this state having custody or guardianship of the child or to which the child has been surrendered as provided in this part."

VIII. STATEMENT OF THE CASE AND MATERIAL FACTS

The Juvenile Court found the three minor children in this case to be dependent and neglected (T.R. 16). They were placed into the custody of the State of Tennessee Department of Children's Services (DCS) on February 14, 2006 (T.R. 16), two days after the youngest child was born on February 12, 2006 (T.R. 2, T.R. 13, T.R. 29).

The children, arrived into Lauretta Martin (Matera)'s house on June 7, 2006, at the ages of 3.5 months, 2 years, and 4 years old (T.R. 66 (10d), T.R. 76 (8)). They had by that age, already endured the separation from their birthparents, and temporary placements with a relative and then with another foster family (T.R. 65 (10b), T.R. 75 (7)). At this time, the Petitioner's wife had been approved for foster parenting by the State of Tennessee Department of Children's Services with her (now deceased) husband Mr. Martin (T.R. 63, T.R. 65, T.R. 75 (7)).

The Children lived with Petitioner's wife and her late husband Mr. Martin from June 7, 2006, until he passed away from his cancer and his treatments in late December 2007, and then continued to live under the foster care of the newly-widowed Mrs. Martin (Matera) until July 15, 2008, longer than any other home up until then in two of the three children's short lives. ("Emergency Petition for Custody", p.2; T.R. 63 (2); T.R. 65; T.R. 75(7)).

The children were stable and happy in this house (T.R. 22, T.R. 65 (10c), T.R. 75(7)), and were adjusted and significantly bonded with their foster mother, (T.R.22, T.R. 65 (10c), T.R. 75 (7)), even so that just before the removal of July 15, 2008, the oldest child told Mrs. Martin (Matera) that though he knew he had to leave his parents, he wanted to stay with Mrs. Martin (Matera), and that he was happy (T.R. 65 (10c), T.R. 76(7)). She continued on with her and her late husband's decision to

establish visiting between the children and their birth grandparents. (T.R. 66(10e), T.R. 76) (See also XI. APPENDIX B, STATE CODES PERTAINING TO VISITATION, pp. B-2 – B-6.)

On February 19th, 2008, the Juvenile Court heard sworn petition of DCS proof that it was in the children's best interests that their birth parents' parental rights be terminated. (T.R. 13-24)

After losing her husband, with DCS permission Lauretta Martin (Matera) also traveled twice to and from California with the children to visit her immediate relatives, on April 2008, and then in June 2008 (T.R. 77). As planned and approved, she successfully flew alone to and from California with the three young children in April, and this was the providential time when she and the young children met briefly the Petitioner, whom Mrs. Martin (Matera) described to the children humorously as "Mr. Scruffy", and an old acquaintance from high school. The Petitioner also heard of her planned future June trip.

In mid-June 2008, Mrs. Martin (Matera) took the children again by herself to California (T.R. 77), so that the children could again see her family and celebrate the 50th anniversary party of her parents with friends and family. Almost every morning, the Petitioner began to knock on the front door of the home of the parents of Mrs. Martin (Matera), and was invited in for coffee. It was during this visit that the oldest foster son uncannily stated that "he wants to marry you".

Mrs. Martin (Matera) depended upon friends from church and community, family, neighbors, social workers and other professionals for support and help, as she cared for the children by herself (T.R. 77 (9b), T.R. 79-80 (14), T.R. 82-83 (18, 19), T.R. 98, T.R. 99).

The children were under the care of Mrs. Martin (Matera) for a total of 25 months, just over two years, from June 7, 2006 to July 15,2008, (T.R. 63 (2), 75 (7)), longer than any other home in two of the three children's short lives. (T.R. 65, T.R. 75(7)).

Even while a professional review meeting for the children was held on July 7, 2008 where DCS determined that "there is an imminent threat to the health, safety or well-being" of the children (T.R. 86), on July 8, 2008, the Juvenile Court entered the Termination of Parental Rights and Final Decree of Guardianship which states,

> "upon the sworn petition of the State of Tennessee, Department of Children's Services, with all parties properly before the Court on service of process,...
>
> It is in the children's best interests for termination to be granted, because the children have established a strong bond with their foster parent, who has expressed an interest in adopting the children.
>
> That Respondents are not hereafter entitled to notice to proceedings for the adoption of these children nor have they any right to object to such adoption or otherwise to participate in such proceedings.
>
> IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED:
>
> ...
>
> ENTER this the 8 day of July, 2008.
> /s/ A. Meldrum
> Judge April Meldrum"
> (T.R. 13-25, in particular T.R.13 and T.R.24)

On July 15, 2008, when Mrs. Martin Matera and her three foster children went for a meeting at the local DCS offices where she believed she was to possibly discuss her intent to adopt the minor children in her care (T.R. 79 (12)), the children were taken by the DCS staff that day.

Attached to a Notice of Removal of a Child From a Resource Home form completed by a DCS Foster Parent Support worker on October 20, 2008 (T.R. 86-87), was a request for an administrative appeal form, that was signed and sent back to DCS by Mrs. Martin (Matera). DCS received this form on November 3, 2008 (T.R. 106).

The Petitioner married Lauretta Martin (Matera) during the latter part of 2008.

On January 12, 2009, the Attorneys for Mr. Matera and Mrs. Martin Matera filed their

Emergency Petition for Custody of the Children in the Juvenile Court in Anderson County, Tennessee (T.R. 73-99). As pertains to the federal question of substantive due process and fundamental rights, that Petition provides substantiation of the family interest of Appellants as it existed before the "arbitrary and sudden removal of these Minor Children by the Department" (T.R. 76), stating that the Department's "reasons... did not rise to the level of imminent risk of harm justifying an emergency removal from the Petitioner's [Mrs. Martin Matera's] home" (T.R. 76).

A petition for adoption was filed (by the Wattenbargers) with the Department as party of interest on January 14, 2009, not six months after placement. (T.R. 1-8) At the very time when the Petitioner, at court on February 2, 2009 (T.R. 71), presented his Intervening Adoption Petition to the Judge in the county of residence of the children, the adoption hearing was held but in another county chosen many miles from the county of

residence, having no relationship or connection to the children or those seeking to adopt them. Just subsequent to the time of the adoption proceeding an Intervening Petition for Adoption was attached by the Petitioner along with the Motion to Set Aside the Adoption. (T.R. 60-99) At that time, the federal question involving venue was raised; the Intervening Adoption Petition asserted "that, if the Intervenors are not heard on this Petition, they will be irrevocably harmed and their rights will forever be quashed." (T.R. 65)

Upon the denial of that Motion and Intervening Petition, the Appellants appealed *Pro Se* to the State of Tennessee Court of Appeals in Knoxville, assigned on briefs on February 3, 2010. (APPENDIX A, p. A-2)

The DCS Administrative Hearing was dismissed on March 5, 2009 (APPENDIX A, p. A-20 – A-24), and the Appeal for Reconsideration that followed is "denied at this time," viz., pending resolution of "actions, which have been filed on

your behalf to set aside the adoption." (See APPENDIX A, pp. A-25 – A-30, in particular p. 29, State of Tennessee Department of Children's Services, Administrative Procedures Division, Judge's Opinions).

The Appellate Court affirmed the lower Court's decision, in their Decision filed on April 16, 2010. (See APPENDIX A, pp. A-2 – A-18)

The Application for Permission to Appeal to the Supreme Court of Tennessee was submitted, *Pro Se*, by Appellants on June 15, 2010.

The Supreme Court of Tennessee denied the Appellants/Petitioners' application. The Opinion of the Court of Appeals, as the Supreme Court ruled, is designated "Not for Citation" (in accordance with TSC Rule 4(E)). (See APPENDIX A, pp. A-19)

This Petition for a Writ of *Certiorari*, received and returned with indication of corrections needed by this Honorable Court on November 23, 2010, and again on January 25, 2011, now with corrections, follows.

IX. REASONS FOR REVIEW

The discussion of reasons for review will come under two of the three areas of analyses and findings in the Decision: (A) Venue; (B) Due Process.

(A) VENUE

(A) 1. Tennessee Code Annotated §36-1-114 – Allowing Convenient Venue for Adoptions

That some venues are favored for adoptions, due to having more dates when adoptions can take place, as Appellees first asserted, and/or expedited schedule, as they actually filed less than the statutory six-month waiting period, does not in and of itself impugn the use of Tenn. Code Ann. 36-1-114(4). In this case, where Appellees settled on Blount County (because, Appellees finally asserted in Appellee Brief, (p.7), it offered a family photo after the adoption that same day, the Interveners were at court some dozens of miles down the road, in the county of residence

(they had heard the children had been placed in Monroe County), where their Intervening Petition was presented to the Judge.

(A) 2. Alleged Abuse of Law By Parties to Adoption

Tennessee Code Annotated §36-1-114 provides as follows:

> "The termination or adoption petition may be filed in the county:
>
> (1) Where the petitioners reside;
> (2) Where the child resides;
> (3) Where the child resided when:
>
> (A) The child became subject to the care and control of a public or private child-caring or child-placing agency; or
>
> (B) The child became subject to partial or complete guardianship or co-guardianship pursuant to a surrender proceeding as provided in this part; or
>
> (4) In which is located any licensed child-placing agency or institution operated under the laws of this state having custody or guardianship of the child or to which the child has been surrendered as provided in this part."

As stated by the State of Tennessee Court of Appeals' Opinion,

> "Appellants contend that DCS orchestrated the adoption in Blount County to avoid the intervening petition that had been filed earlier in another county. They assert that venue was proper in either the county where the Children and Foster Parents reside – Monroe – or in the county in which the Children resided when the biological parents' rights were terminated – Anderson." (APPENDIX A, p.A-9)

Ample evidence exists stated in Motion to Set Aside Adoption that Appellees knew about and improperly filed their adoption petition to circumvent Appellant's intervening petitions, the most obvious example being the Appellant's Emergency Petition for Custody against DCS for the custody of the children.

(A) 3. Attorneys' Preferential Positioning Of Adoption Proceedings and Equal Protection of Other Areas

In this case, the Court repeated the

Appellees' reasoning concerning Tenn. Code Ann. §36-1-114(4) to permit the adoption to stand, to wit, that the presence, or conversely the absence, of DCS in a county makes that county appropriate, or inappropriate, venues, respectively, to file adoptions under Tenn. Code Ann. §36-1-114(4). This is discriminatory. The lack of office presence, besides restricting assistance of foster parent resource staff, in so deprived counties would effectively prohibit participation in the legal process by an intervening citizen trying to assert his intervening petition for a hearing in the children's local venue. If an adoption hearing were scheduled of the children from an area without administrative presence, the statute by discriminating against those in such a county would be a deprivation of equal protection of the law as discussed at length in the initial brief with special reference to *Dandridge v. Williams* 397 U.S. 471 (1970).

In that case it was argued,

> "When a legislative classification has the effect of placing such additional burdens on a class of persons characterized by its extreme

> poverty and a practical inability to escape from problems which the classification creates, strict scrutiny of the classification is appropriate. *Harper v. Board of Elections*, 383 U.S. 663 (1966); *Griffin v. Illinois*, 351 U.S. 12 (1956); *Douglas v. California*, 372 U.S. 353 (1963)". U.S. Supreme Court, *Dandridge v. Williams*, Brief for the Appellees, October Term, 1969, No. 131; Argument 1.C.2.b Concerning the Right to Life.

While not agreeing with the "inescapable" nature of such problems, the Court acknowledged "social economic and even philosophical problems" *Dandridge v. Williams*, 397 U.S. 488 (1970 while relying on greater "economies of scale," to offset the regulation's problematical social and economic aspect. *Dandridge v. Williams*, 397 U.S. 481-482 (1970).

In the philosophical regard the court has not, since another era (see *Lochner v. New York*, 198 U.S. 45 (1904)), based its review of higher order acts of government upon its differing with a school of thought, while preserving the idea of "judicial and moral independence" *West Coast Hotel Co. v. Parrish* 300 U.S. 397, 402 (1937) (dissenting opinion). That

idea is predicated upon the relationship of moral justice, among the many often-competing notions, conceptions and theories of right; of all these, this singlemost important notion here touches upon the abovementioned philosophical problem.

Unlike in the previous Williams case which concerned State regulation in the social and economic field, the choice of venue in this case infringed upon competing Petitions, seeking custody, and to adopt the children, rights asserted prior to the adoption in the best interest of the children, thus the case *sub judice* hinges upon the liberty interest in family, more basic than unequal "gratuitous" benefits in Williams. *Dandridge v. Williams*, 397 U.S. 523 (1970).

In the case *sub judice*, neither the Petitioner nor the Foster Children could choose freely the county where they reside. This was not a matter of choice but rather of plain fact of poor, "naive" existence. Being able to file in such unrelated counties is characteristic of those who both

understand the law or have access to those that do, and occasion upon such locations distant from the county of residence.

The Petitioner and the foster family in the case *sub judice* has characterized in a direct line with Williams *Dandridge v. Williams*, 397 U.S. 473 1970, what the Decision disavowed, "the intractable (social, economic and even) ***philosophical problems***" which were "not the business of this Court." (Parentheses and italics added). *Dandridge v. Williams*, 397 U.S. 488 (1970).

Petitioner has described in some detail at the State Appellate Court level being:

> "Although dispossessed of equal or adequate chances in life or state assistance under Williams as represented in a direct line leading to the instant case, the family here could all the same rest upon this legal protection [by reference in the order by the Supreme Court to greater abilities of Williams *Dandridge v. Williams*, 397 U.S. 480 (1970)] against further encroachment on its ability to accommodate itself." (p. 18, Appellants' Brief)

This reference implied that liberty interest, to overcome harsh economic and social, but also philosophical problems which they have been so characterizing in a direct line from Williams through the Tennessee appeal to the instant petition.

The latter type ("philosophical") of these problems emerged in the classification of Petitioner and foster family as unequal, under T.C.A. §36-1-114(4), though in context of Fourteenth Amendment jurisprudence, this category of problem attains official recognition beginning with Williams, as mentioned in Appellants' Initial Brief:

> "Just as Young Mr. Williams, the seventh "extra" minor in a large Maryland family, now as a child now as a grown parent with his own children, would have to manage deprived of assistance provided to others his age but without his "unlucrative" but otherwise identical position, thereby Petitioner had been relegated to a certain unequal position which would not in itself constitute a grave threat to life's most basic values such as raising one's children." (p. 19, Appellants' Brief)

The intractable, philosophical problem becomes, *tout court*, ***inescapable*** from the infringement of the abovementioned liberty interest by devices such as utilized by the Department of Children's Services, *et al.* in this case.

Those characterized by those problems which a classification, through, e.g. the increasing reification of "some inequality" *Dandridge v. Williams*, 397 U.S. 486 (1970), as originally deemed compatible with Fourteenth Amendment jurisprudence, creates should constitute the class for which the standard of strict scrutiny applies. It would be argued that no compelling state interest exists for the classification under strict scrutiny. Thus as the way to avoid the inescapability of exactly that philosophical problem, the Appellant deserves that measure of review when the statute Tennessee Code Annotated §36-1-114(4) in the context of Equal Protection jurisprudence creates such a problem without a compelling state interest for such a law.

(B) DUE PROCESS

(B)1. Substantive Due Process

In the quickness of the removal and adoption of the Children, a balanced review of the important facts surrounding the case never occurred. Although the home study of the new adoptive parents was completed by the independent contractor with the State of Tennessee Department of Children's Services, and given the blessing of the Trial Court, no account was taken of the intervening petition in the Best Interest of the Children. The relationships in a foster and extended (see XI. APPENDIX B: PERTAINING TO VISITATION, pp.B-1–B-6) family may resemble to some extent parental rights, which implies a liberty interest in family, and confers certain due process protections *Rivera v. Marcus*, 533 F. Supp 207 (1982).

(B) 2. Procedural Due Process

In the instant case, the Appellate Court's

decision states "The trial court did not err in refusing to allow Appellants to proceed with the intervening petition because they cannot meet the custody requirement at all times pertinent to the adoption proceeding." (APPENDIX A, p. A-14)

The Tennessee Supreme Court's interpretation of *In Re: Sidney J.* directly contravenes the Appeal Court's conclusion of law in this treatment of the Appellants' petition for Adoption. While Appellants would have had custody but for the sudden and arbitrary taking of the children, their not having custody is clearly no bar to their interveners' Petition, in light of *In Re: Sidney J.*

This Petition for Writ of *Certiorari* should be granted so that the Supreme Court may address the federal question of due process, as the above Tennessee Court's incorrect determination of the law in its interpretation of the adoption statute as regards to custody, coupled with the other reasons of due process abovementioned warrants judicial review.

X. CONCLUSION

For each of the foregoing reasons, it is respectfully requested that the Court grant a Writ of *Certiorari* in the above case of *Matera v. State of Tennessee Department of Children's Services*, for this _____ Day of March, 2011.

Respectfully submitted,

_____

Christopher P. Matera, Petitioner *Pro Se*

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IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 3, 2010

IN RE DEVON W., ET AL.

Appeal from the Circuit Court for Blount County
No. E-22811 W. Dale Young, Judge

No. E2009-01326-COA-R3-JV - Filed April 16, 2010

Former foster mother and her new husband filed a motion to intervene and to set aside the adoption of three children by the current foster parents. The trial court denied the motion. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

JOHN W. MCCLARTY, J., delivered the opinion of the Court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Lauretta Martin-Matera and Christopher P. Matera, Kingston, Tennessee, appellants, pro se.

N. David Roberts, Jr., Knoxville, Tennessee, for the appellees, Timothy John W. and Lisa Kaye W.

OPINION

I. BACKGROUND

Three minor children -Devon P.C., Heaven L.C. and Araya S.C. ("the Children") – were removed from their biological parents in Anderson County by the Tennessee Department of Children's Services ("DCS") on February 14, 2006. Despite attempts at reunification, DCS ultimately filed a petition to terminate the parental rights of the biological parents. After the parental rights were terminated,[1] full legal guardianship was awarded to DCS.

While in foster care, the Children were placed with Patrick Martin and Lauretta (Laurie) Martin("Intervenor")on June 7 , 2006. After Mr. Martin's death in December 2007, the Children remained with Intervenor.

DCS subsequently determined that Intervenor had engaged in inappropriate conduct against the Children and implemented a corrective action plan in April 2008. The plan required Intervenor to take remedial steps concerning her conduct and behavior towards the Children. However, DCS ultimately concluded that the corrective action plan was not being followed by Intervenor and removed the

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[1] Order of termination entered on July 8, 2008

Children from her custody on July 15, 2008. DCS closed Intervenor's home to further participation in foster care.

Following the removal of the Children from Intervenor's home, they were placed with Timothy J. W. and Lisa K. W. ("Foster Parents"). Intervenor subsequently married Christopher Matera (collectively with Intervenor "Appellants").

On January 14, 2009, Foster Parents filed a petition to adopt the Children in Blount County Circuit Court. Omni Visions, a licensed child placing agency, prepared a confidential report for the trial court regarding the proposed adoptions. DCS consented to the adoptions, and a final order of adoption was entered on February 2, 2009.

On February 13, 2009, Appellants filed a motion to intervene and to set aside the adoption.[2] Appellants asserted that Blount County was not the proper venue for the adoption proceeding and that Foster Parents had filed the petition in Blount County to prevent Appellants from filing an intervening petition for adoption. Intervenor claimed that DCS was aware that she was asserting her right to custody of the Children as a result of the petition for custody she had filed in the Juvenile Court for Anderson County on January 12, 2009.

---

[2] Appellants attached an "Intervening Petition for Adoption," in which they sought to adopt the Children.

After conducting a hearing on May 8, 2009, the trial court denied the motion in an order entered on May 22, 2009. The trial court held:

> Upon consideration of the argument of counsel at the hearing, the Court finds that the movants do not [have] standing to challenge the final order of adoption that was entered. . . . The Court further finds that setting aside the adoption is not in the best interests of the children.

Appellants filed a timely appeal.

II. ISSUES

The issues raised by Appellants are restated as follows:

> A. Whether Appellants were denied due process in the trial court's allowance for a permissive venue.
> B. Whether Appellants, who were seeking custody for the best interests of the Children through other legal proceedings, were denied substantive due process in the trial court upholding the final adoption decree.
> C. Whether Appellants were denied fundamental rights guaranteed to foster parents in Tenn. Code Ann. §37-2-

415(a)(1,2,4,6,11-20) in the trial court upholding the final adoption decree.

III. STANDARD OF REVIEW

The standard of review in this appeal is de novo upon the trial court's record with a presumption of correctness of the court's findings of fact unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). We review a trial court's conclusions of law under a de novo standard upon the record with no presumption of correctness. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993).

IV. DISCUSSION

As we stated in *In re K.A.Y.*, 80 S.W.3d 19 (Tenn. Ct. App. 2002),

> In Tennessee, the adoption statutes are to be strictly construed since they are in derogation of the common law. Tenn. Code Ann. §36-1-101(a) sets forth the purpose of the adoption statutory scheme, and provides, in pertinent part, as follows:

(a) The primary purpose of this part is to provide means and procedures for the adoption of children and adults that recognize and effectuate to the greatest extent possible the rights and interests of persons affected by adoption, especially those of the adopted persons, . . . and to those ends seek to ensure, to the greatest extent possible, that:

* * *

(2) Children are placed only with those persons who have been determined to be capable of providing proper care and a loving home for an adopted child;

(3) The rights of children to be raised in loving homes [that] are capable of providing proper care for adopted children and that the best interests of children in the adoptive process are protected;

(4) The adoptive process protects the rights of all persons who are affected by that process and who should be entitled to notice of the proceedings for the adoption of the child;

(5) The adoption proceedings are held in an expeditious manner to enable the child to achieve permanency, consistent with the

> child's best interests, at the earliest possible date . . . .
>
> Tenn. Code Ann. §36-1-101(a) demonstrates that the best interests of the child whose adoption is at issue [are] paramount. Accordingly, when a court is determining an adoption petition, its primary concern is what will serve the best interest of the child. 80 S.W.3d at 23-24 (internal citations omitted).

A. VENUE

Tenn. Code Ann. §36-1-114 provides as follows:

> The termination or adoption petition may be filed in the county:
>
> (1) Where the petitioners reside;
>
> (2) Where the child resides;
>
> (3) Where the child resided when:
>
> (A) The child became subject to the care and control of a public or private child-caring or child-placing agency; or

> (B) The child became subject to partial or complete guardianship or co-guardianship pursuant to a surrender proceeding as provided in this part; or
>
> (4) In which is located any licensed child-placing agency or institution operated under the laws of this state having custody or guardianship of the child or to which the child has been surrendered as provided in this part.
>
> Tenn. Code Ann. §36-1-114 (Supp. 2009).

Appellants contend that DCS orchestrated the adoption in Blount County to avoid the intervening petition that had been filed earlier in another county. They assert that venue was proper in either the county where the Children and Foster Parents reside – Monroe – or in the county in which the Children resided when the biological parents' rights were terminated – Anderson.

In this case, DCS maintained full legal guardianship of the Children prior to their adoption. DCS has an office located in Maryville, Blount County, Tennessee, which makes venue proper in Blount County under Tenn. Code Ann. §36-1-114(4). There is no evidence of record to support the contention that the adoption petition was filed in Blount County for an improper reason.

B. DUE PROCESS

Appellants argue that they were denied substantive due process because the trial court disregarded their attempts to seek custody of the Children. They contend it was improper to deny Intervenor the opportunity to testify and explain how she took care of the Children for over two years and described the bond she shared with the Children.

The adoption statutes contemplate intervention where a third party files a petition seeking to adopt the same child that is subject to a pending adoption petition. *In re Adoption of M.J.S.*, 44 S.W.3d 41, 51 (Tenn. Ct. App. 2000). In order to be eligible to *file* an intervening adoption petition, a petitioner need not have physical custody of the child or the right to receive custody of the child at the time of the filing, because the adoption statutes specifically except such an intervenor from the statutes' custody requirement at that point in the proceedings. *Id.*

However, in order to ultimately *prevail* on a petition to adopt to child, the intervening petitioner must meet the adoption statutes' custody requirement at a subsequent point in the adoption proceedings. *Id.* Although Tenn. Code Ann. §36-1-115(b) excepts an intervening petitioner from the custody requirement at the time of filing the petition

to adopt, other provisions of the adoption statutes do not contain such an exception and contemplate that the intervening petitioner will subsequently obtain custody of the child. *Id.* As further noted *in In re S.E.J.*, No. W2008-01354-COA-R3-PT, 2009 WL 2058790, at *3, 4 (Tenn. Ct. App. W.S., July 16, 2009) (perm. app. granted Nov. 16, 2009):

> For instance, the adoption statutes require adoption petitions to state, among other things, "[t]hat the petitioners have physical custody of the child or that they meet the requirements of §36-1-111(d)(6), and from what person or agency such custody was *or is to be obtained*." Tenn. Code Ann. §36-1116(b)(5) (2005). Similarly, the trial court's final order of adoption must state "[t]he date when the petitioners acquired physical custody of the child and from what person or agency or by which court order." Tenn. Code Ann. §361-120(a)(4)(2005). In addition, Tennessee Code Annotated section 36-1116(f)(1) provides:
>
> Upon the filing of the petition, the court shall have exclusive jurisdiction of all matters pertaining to the child, . . . except for allegations of delinquency, unruliness or truancy of the child pursuant to title 37; provided, that, unless a party has filed an intervening petition to an existing adoption

petition concerning a child who is in the physical custody of the original petitioners, the court shall have no jurisdiction to issue any orders granting custody or guardianship of the child to the petitioners or to the intervening petitioners or granting an adoption of the child to the petitioners or to the intervening petitioners unless the petition affirmatively states, and the court finds in its order, that the petitioners have physical custody of the child at the time of the filing of the petition, entry of the order of guardianship, or entry of the order of adoption, or unless the petitioners otherwise meet the requirements of §361-111(d)(6).

When faced with interpreting this statute in *In re Adoption of M.J.S.*, this Court stated:

> Although the foregoing statute is not a model of clarity, we interpret this statute to mean that, in cases where an intervening adoption petition has been filed, neither the original petitioners nor the intervening petitioners will be granted an adoption of the child unless the trial court finds that the petitioners have either physical custody of the child or the right to receive custody of the child pursuant to a validly executed surrender. 44 S.W.3d at 52.

2009 WL 2058790, at *3,4 (footnote omitted). Accordingly, the trial court would not be authorized to grant Appellants an adoption of the Children unless the court found that the Appellants had physical custody or the right to receive custody of the Children at some point during the adoption proceedings. See Tenn. Code Ann. §§36-1-116(f)(1), 36-1-120(a)(4).

At the time of the filing of the adoption petition on January 14, 2009, the Children had not resided in Intervenor's home for twelve or more consecutive months immediately preceding the filing of the adoption petition. Accordingly, Appellants were not entitled to the statutory first preference. See Tenn. Code Ann. §36-1-115(g)(1). Additionally, as revealed in the proposed intervening petition for adoption, an approved adoptive home study had not occurred in Appellants' home. Intervenor states as follows in the petition:

> That due to the previous foster parent relationship and the fact that the Minor children resided with the Intervenor, Laurie Martin-Matera for over two (2) years, that the six-month waiting period, order of reference, preliminary home study, order of guardianship or custody, supervision, and preliminary and final court reports be waived pursuant to Tennessee Code

> Annotated §36-1-119(a) and (b), and that the Department do a background check on the new resident in the home, Chris Martin-Matera, prior to entering an Order of Adoption.

Due to failing to provide the trial court with an approved adoptive home study and DCS's closing of Intervenor's home, Appellants did not meet the requirements imposed upon persons seeking to adopt children in the custody of DCS. Thus, Appellants did not meet the requirements of either prong (g)(1) or (g)(2) of Tenn. Code Ann. §36-1-115. [3] The trial court did not err in refusing to allow Appellants to proceed with the intervening petition because they cannot meet the custody requirement at all times pertinent to the adoption proceeding.

---

[3] Tenn. Code Ann. §36-1-115(g) provides:

(1) When a child is placed in a foster home by the department or otherwise, and becomes available for adoption due to the termination or surrender of all parental or guardianship rights to the child, those foster parents shall be given first preference to adoption of the child if the child has resided in the foster home for twelve (12) or more consecutive months immediately preceding the filing of an adoption petition.

(2) In becoming adoptive parents, the foster parents shall meet all requirements otherwise imposed on persons seeking to adopt children in the custody of the department, and shall be subject to all other provisions of this part. Tenn. Code Ann. §36-1-115(g)(2005).

Additionally, Appellants have not established that even if the court were to vacate the final adoption decree, they could otherwise prevail in adopting the Children. Appellants would have to take the following steps, at a minimum, to adopt the Children if the final order of adoption were vacated: (1) Become approved foster parents able to seek custody (since you must first have physical custody in order to adopt a child), *see* Tenn. Code Ann. 36-1115(b); (2) File a petition for custody and be awarded physical custody of the Children; (3) Present an approved adoptive home study to a trial court showing suitability for adoption, after first obtaining physical custody (due to DCS's closing of Intervenor's home, this home study would have to be submitted by a licensed child-placing agency); (4) Seek termination of the guardianship rights of DCS for one of the statutory grounds set forth at Tenn. Code Ann. §36-1-113(g)(1)-(9). If Appellants were unable to terminate the guardianship rights of DCS, they would be unable to adopt the Children without the voluntary consent of DCS. The agency will not give its voluntary consent to a home which it has closed for cause. Accordingly, even if the trial court set aside the final order of adoption, Appellants could not prevail in adopting the Children.

We note further that Tenn. Code Ann. §36-1-117(a)(1) and (d) list the necessary parties to an adoption proceeding and the parties who are entitled

to notice of the matter. Former foster parents, such as Intervenor, are not listed. See *In re K.A.Y.*, 80 S.W.3d at 24. Foster parents in Tennessee have no state or federal statutory rights comparable to natural parents.

The relevant adoption statute only required two parties be joined in the adoption proceeding. One required party was the petitioners – Foster Parents – seeking the adoption of the Children, and the other party required to be joined would be any person with "parental or guardianship rights to the [C]hild[ren]." See Tenn. Code Ann. §36-1-117(a)(1). Former foster parents are not included among the individuals entitled to notice. Even other biological or legal "relatives" of the Children are not entitled to notice of the adoption proceeding if they have no parental or guardianship rights to the Children. Tenn. Code Ann. §36-1-117(d)(1). The only persons entitled to notice are legal guardians or any public or private agency having custody or complete or partial guardianship of the Children. In this case, DCS was the only "person" having custody or complete or partial legal guardianship of the Children. DCS had proper notice, a representative appeared at the proceedings, and the agency participated in the adoption proceedings by giving consent pursuant to its guardianship rights of the Children.

In this matter, Mr. Matera was clearly not entitled to notice, as he was never a foster parent to

any of the Children, never resided with them, and has no relationship or connection with them. He is not an approved adoptive parent for the Children. As for Intervenor, the Children were removed from her care by DCS for legal cause. At the time of the hearing, she had neither parental rights nor guardianship rights to the Children. Thus, she was not entitled to any notice of the adoption proceedings.

C. RIGHTS OF FOSTER PARENTS

The rights of foster parents, contained at Tenn. Code Ann. §37-2-415, provide that "[t]o the extent not otherwise prohibited by state or federal statute, the department shall, through promulgation of rules in accordance with the Uniform Administrative Procedures Act . . ." implement certain rights for foster parents. Tenn. Code Ann. §37-2-415(a) (Supp. 2009). A foster parent is afforded the right to an administrative hearing if he or she believes that his or her rights have been denied under the statutory rights. In this case, Intervenor filed the administrative pleading to assert a grievance; however, due to multiple requests for continuances made by her or her counsel, the administrative grievance became moot when the adoption was granted to Foster Parents. The Administrative Law Judge dismissed the administrative action in an order entered March 5,

2009. Thus, the statute does not provide any remedy that will assist Appellants.

V. CONCLUSION

The judgment of the trial court is affirmed. Costs on appeal are taxed to Appellants, Christopher Matera and Lauretta Martin-Matera. This case is remanded to the trial court, pursuant to applicable law, for enforcement of that court's judgment.

JOHN W. McCLARTY, JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

IN RE DEVON P.K.C. ET AL.

Circuit Court for Blount County
No. E-22811

No. E2009-01326-SC-R11-JV

ORDER

Upon consideration of the application for permission to appeal of the applicants and the record before us, the application is denied.

The opinion of the Court of Appeals is designated "Not For Citation" in accordance with Tennessee Supreme Court Rule 4(E).

PER CURIAM

STAMP: FILED Aug 25 2010 Clerk of the Courts
Rec'd by /s/ A Woods

BEFORE THE TENNESSEE
DEPARTMENT OF CHILDREN'S SERVICES
ADMINISTRATIVE PROCEDURES DIVISION

IN THE MATTER OF:

LAURETTA MARTIN, APPELLANT

V.

DEPARTMENT OF CHILDREN'S SERVICES

DOCKET NO. 08-387-FC

ORDER OF DISMISSAL

This matter was reviewed by Carol G. Marcum, Administrative Judge, upon her motion only and considering the Request for Fair Hearing filed by the Appellant foster parent, telephone conference between counsel for parties and the Administrative Judge, Appellants' Second Motion for Continuance, Appellant's Request for Discovery, and documentation attached to this Order of Dismissal.

It appearing from the above-listed documents and communications, the following are made Findings in this case:

1. The Department of Children's Services received the Appellant's Appeal for a Fair Hearing on November 3, 2008.
2. A hearing was scheduled for November 21, 2008.
3. On November 20, 2008, the Administrative Procedures Division received a faxed letter from the Appellant requesting a continuance in order to hire an attorney.
4. A continuance was granted and a Notice of a Hearing, dated November 21, 2008, was sent to the Appellant. The new Notice of Hearing set the hearing date for March 6, 2009.
5. On February 11, 2009, the Administrative Procedures Division received a Notice of Appearance from Appellant's counsel, Hillary Dewhirst-Swink.
6. On February 20, 2009, the Administrative Procedures Division received a Motion to Continue from Appellant's counsel.
7. A conference call was held on February 25, 2009, between counsel for the parties and the ALJ. At that time the Appellant presented arguments for the Motion for Continuance. The Department counsel opposed a continuance.
8. The Appellant's Motion for Continuance was denied pursuant to the Department of Children's Service Rule 0250-5-13-.07 and the length of time

the Appellant had from the last continuance granted to her.

9. During the telephone conversation, the Department's counsel stated that their position was that the issues to be addressed in this hearing were moot because the foster home had been closed by the Department and the children (DC, HC and AC) have been adopted. The Appellant's counsel stated the Appellant wanted to have an administrative Fair Hearing regarding the issue of the removal.
10. The Appellant's counsel stated there were other related hearings in Circuit or Chancery Courts regarding the children's adoption/placement.
11. The counsel and ALJ discussed that the closing of the foster home and the adoption were not within the purview of the ALJ. The ALJ's position was that the Fair Hearing could only address the removal of the children from the foster home and whether the removal was in the best interest of the children.
12. The attorneys also discussed discovery issues and were encouraged to interact fairly regarding reasonable discover. On February 26, 2000. the Appellant filed a Request for Discovery.
13. The Administrative Procedures Division received a second Motion for a Continuance from the Appellant based on response to discover requests.
14. Additionally, the Administrative Procedures Division received the attached documents as follows:

a. A copy of DCS documents showing the Appellant's home is closed as a foster home.
b. Court record confirming adoption of the children.

Upon a review of the documents and review of Jeager v. Civil Service Commission, No. M2007-02451-COA-R3-CV, filed 2/2/2009, it appears that the issue of the removal of the children from the Appellant's foster home is moot. The Department of Children's Services Administrative Procedures Division could not provide relief to the Appellant by conducting its Administrative Hearing were she to prevail in the hearing. The issue of the best interests of the children would have been an issue addressed by the Court permitting the adoption of the children.

Therefore, the issue to be addressed at the Fair Hearing is moot and the Appeal should be dismissed.

THEREFORE, IT IS ORDERED the Appeal in this case is dismissed. The Order of Dismissal is without prejudice to the Appellant.

Entered this 5th day of March 2009.

/s/ Carol G. Marcum
Administrative Judge

cc: Hillary Dewhirst-Swink, Attorney for the Appellant
Anita Dulaney, Case Manager
Marcy Martin, Team Coordinator
Lindsay Hunt, DCS Assistant General Counsel
Julie Rotella, Regional Administrator
Elizabeth Black, Executive Director,
Child Permanency
File

WITH ATTACHMENTS

Certificate of Service

The undersigned hereby certifies that a true and correct copy of this document has been served upon counsel and all interested parties by delivering same to them at their address of record by placing a true and correct copy of same in the United States mail, postage prepaid.

/s/ Carol G. Marcum
Administrative Judge

State of Tennessee
Department of Children's Services
Administrative Procedures Division
1268 Foster Avenue, Nix #1
Nashville, Tennessee 37243
Tel. No. (615) 741-1110 Fax No (615) 741-4518

April 8, 2009

Ms. Lauretta J. Martin (Matera)
...

Re: Docket Number 08-387-FC

Dear Ms. Martin:

I have reviewed your request for reconsideration of my decision dated March 5, 2009, which was an Order of Dismissal of your appeal of the Department's decision to remove foster children from your home. The order of Dismissal set out the procedural timeline of the case with the rational for the decision to dismiss your appeal.

In your "Appeal for Reconsideration" of the Order of Dismissal, you asked for the opportunity to have a full Fair Hearing and to represent yourself. The Appeal cites your concern that one of the attorneys representing you gave this Administrative Judge "much vexation" due to the attorney's zealousness in presenting a "Second Request for a Continuance" and Request for Discovery. Therefore, you requested the opportunity to represent yourself and the dismissal be reconsidered "without any thought of

blame or retribution". (See page 7 of the appeal for reconsideration.)

This letter grants your request to represent your self in this administrative matter. The written statements in your Appeal for Reconsideration will be considered your declaration that no attorney is representing you in this matter and, therefore, the parties and Administrative Procedures Division are allowed to have direct contact with you, as opposed to counsel.

As a way of alleviating you concerns about the decision process, I will explain the nature of the telephone conference between your attorney, DCS counsel and myself on February 25, 2009, because you were not a party to that conference. The conference call was held to address a Motion for a Continuance requested by your counsel. As was set out in the Order of Dismissal, the Department opposed this Motion for a Continuance and the Administrative Judge was concerned due to the length of time that had past from the last continuance granted to you in light of the time limits for these hearings and Department of Children's Service Rule 0250-5-13.07.

The decision to deny the Motion for a Continuance was announced; however, immediately thereafter your counsel wanted to know whether a continuance would be granted if the Department had not given the attorney discovery. However, your attorney had

not yet filed a request for discovery. The Department attorney stated the Department might not have the ability to collect all the information. At this point, I reminded both counsel that they were expected to interact fairly regarding reasonable discovery. I did not want the discovery requests of your attorney to be used simply as a means of getting a continuance, nor did I want the Department to fail to supply the reasonable requests for the discovery to which you would be entitled.

When I practiced as an attorney, I was occasionally reminded by the Court that my persistence or zealousness was noted. However, once the Court's decision was made, the Court made it plain it was time for me to move on to a more productive legal position. Therefore, I do not take offense or visit retribution on parties or their counsel, because I recognize they are simply struggling with difficult situations and seeking solutions. It is my job to referee all the parties according to the applicable rules and legal principles.

After the February 25, 2009 ruling, regarding the Motion for a Continuance, another Motion for a Continuance based on the discovery request. At that time I reviewed the case file and issued the Order of Dismissal. The Order of Dismissal was granted on a technical legal principal and should not be viewed as an assessment of the validity of any fact or legal issue you may have regarding the issue of the removal itself. In other words, the dismissal was not

based on an acceptance by the Administrative Judge of any of the allegations made in the foster care removal letter by the Department.

You set out the history of your case beginning at page 3 of your appeal for reconsideration. One of the items you list in the history is that the previous indication against you for Lack of Supervision was overturned by a letter from the Department dated March 9, 2009. The overturning of the indication is certainly one of the factors to be considered if an administrative hearing as to the removal is ultimately held. However, before an administrative Fair Hearing can be granted, the issue of the adoption must be addressed by the Circuit Court.

The dismissal was based on the fact the Department of Children's Services Administrative Procedures Division cannot counteract the adoption approved by the Circuit Court or the closure of your foster home. That is, as based on the case in the Order of Dismissal, any decision from the DCS Administrative Procedures Division "could not provide relief to the Appellant" were she to prevail at the administrative Fair Hearing.

You are represented in actions, which have been filed on your behalf to set aside the adoption in Circuit Court and to become the adoptive parent. From the history you recited and the exhibits you have supplied, it appears these actions to set aside the adoption have been filed but the Circuit Court

has not entered an order setting the adoption aside at this time. The Circuit Court could have several legal issues to address before it makes a determination whether to set aside the adoption. These potential legal issues before the Circuit Court would not necessarily have a relationship to the allegations surrounding the removal of the children from your foster home or the closure of your foster home. Therefore, until the Circuit Court makes a decision as to the adoption, the issue remains moot.

The closure of foster homes does not come under the jurisdiction of the DCS Administrative Procedures Division and would have to be addressed pursuant to Department of Children's Services Administrative Policies and Procedures 16.16, Denial or Closure of Resource Homes, at Section E. Note in the Order of Dismissal, it states the dismissal was "without prejudice" to the Appellant. This means if all other legal impediments (such as, the adoption in Circuit Court or the placement of the children within you home) are overcome, then the administrative Fair Hearing regarding the removal can be held. The Appeal for Reconsideration of the Order of Dismissal is denied at this time.

Sincerely,

/s/ Carol G. Marcum
Administrative Judge

CC: Lauretta J. Martin (Matera)

Anita Dulaney, Case Manager
Marcy Martin, Team Coordinator
Julie Rotella, Regional Administrator
Lindsay Hunt, DCS Assistant General Counsel
John Johnson, Director, Foster Care and Adoptions
Elizabeth Black, Executive Director, Child Permanency
Viola P. Miller, Commissioner
File

APPENDIX B –
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Tennessee Code Annotated (T.C.A.), concerning Grandparent's visitation rights.

T.C.A. §36-6-306. Visitation rights of grandparents.
(a) Any of the following circumstances, when presented in a petition for grandparent visitation to the circuit, chancery, general sessions courts with domestic relations jurisdiction or juvenile court in matters involving children born out of wedlock of the county in which the petitioned child currently resides, necessitates a hearing if such grand-parent visitation is opposed by the custodial parent or parents: (underline, emphasis added)
(a) (1) The father or mother of an unmarried minor child is deceased;

(2) The child's father or mother are divorced, legally separated, or were never married to each other;

(3) The child's father or mother has been missing for not less than six (6) months;

(4) The court of another state has ordered grandparent visitation;

(5) The child resided in the home of the grandparent for a period of twelve (12) months or more and was subsequently removed from the home by the parent or parents (this grandparent-grandchild relationship establishes a rebuttable presumption that denial of visitation may result in irreparable harm to the child); or

(6) The child and the grandparent maintained a significant existing relationship for a period of

twelve (12) months or more immediately preceding severance of the relationship, this relationship was severed by the parent or parents for reasons other than abuse or presence of a danger of substantial harm to the child, and severance of this relationship is likely to occasion substantial emotional harm to the child.

(b) (1) In considering a petition for grandparent visitation, the court shall first determine the presence of a danger of substantial harm to the child. Such finding of substantial harm may be based upon cessation of the relationship between an unmarried minor child and the child's grandparent if the court determines, upon proper proof, that:

(A) The child had such a significant existing relationship with the grandparent that loss of the relationship is likely to occasion severe emotional harm to the child;

(B) The grandparent functioned as a primary caregiver such that cessation of the relationship could interrupt provision of the daily needs of the child and thus occasion physical or emotional harm; or

(C) The child had a significant existing relationship with the grandparent and loss of the relationship presents the danger of other direct and substantial harm to the child.

(b) (2) For purposes of this section, a grand-parent shall be deemed to have a significant existing relationship with a grandchild if: (underline and emphasis added)

(A) The child resided with the grandparent for at least six (6) consecutive months; (B) The grand-parent was a full-time caretaker of the child for a period of not less than six (6) consecutive months; or (C) The grandparent had frequent visitation with the child who is the subject of the suit for a period of not less than one (1) year. (underline and emphasis added)

(b) (3) A grandparent is not required to present the testimony or affidavit of an expert witness in order to establish a significant existing relationship with a grandchild or that the loss of the relationship is likely to occasion severe emotional harm to the child. Instead, the court shall consider whether the facts of the particular case would lead a reasonable person to believe that there is a significant existing relationship between the grandparent and grandchild or that the loss of the relationship is likely to occasion severe emotional harm to the child. (underline and emphasis added)

(b) (4) For the purposes of this section, if the child's parent is deceased and the grandparent seeking visitation is the parent of that deceased parent, there shall be a rebuttable presumption of substantial harm to the child based upon the

cessation of the relationship between the child and grandparent.

(c) Upon an initial finding of danger of substantial harm to the child, the court shall then determine whether grandparent visitation would be in the best interests of the child based upon the factors in § 36-6-307. Upon such determination, reasonable visitation may be ordered.

(d) (1) Notwithstanding the provisions of § 36-1-121, if a relative or stepparent adopts a child, the provisions of this section apply.

(2) If a person other than a relative or a stepparent adopts a child, any visitation rights granted pursuant to this section before the adoption of the child shall automatically end upon such adoption.

(e) Notwithstanding any provision of law to the contrary, as used in this section and in § 36-6-307, with regard to the petitioned child, the word "grandparent" includes, but is not limited to: (1) A biological grandparent; (2) The spouse of a biological grandparent; or (3) A parent of an adoptive parent. [Acts 1997, ch. 503, § 2; 2000, ch. 891, § 1; 2001, ch. 440, § 1; 2003, ch. 79, § 1; 2004, ch. 452, § 1; 2004, ch. 691, § 1; 2004, ch. 874, § 1; 2007, ch. 22, § 1; 2010, ch. 957, § 1.]

T.C.A. §36-6-307. Determination of best interests of child for grandparent visitations.-
In determining the best interests of the child under § 36-6-306, the court shall consider all pertinent matters, including, but not necessarily limited to, the following:
(1) The length and quality of the prior relationship between the child and the grandparent and the role performed by the grandparent;
(2) The existing emotional ties of the child to the grandparent;
(3) The preference of the child if the child is determined to be of sufficient maturity to express a preference;
(4) The effect of hostility between the grandparent and the parent of the child manifested before the child, and the willingness of the grandparent, except in case of abuse, to encourage a close relationship between the child and the parent or parents, or guardian or guardians of the child;
(5) The good faith of the grandparent in filing the petition;
(6) If the parents are divorced or separated, the time-sharing arrangement that exists between the parents with respect to the child; and
(7) If one (1) parent is deceased or missing, the fact that the grandparents requesting visitation are the parents of the deceased or missing person.
[Acts 1997, ch. 503, § 2; 2000, ch. 891, § 2.]